

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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In re FOREIGN EXCHANGE BENCHMARK	:	13 Civ. 7789 (LGS)
RATES ANTITRUST LITIGATION.	:	
	:	<u>ORDER</u>
	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, on August 19, 2022, the parties filed their respective proposed verdict forms along with supporting pretrial memoranda.

WHEREAS, on August 23, 2022, the parties filed a joint letter seeking an extension of time until September 2, 2022, to respond to each other's pretrial memoranda.

WHEREAS, Defendants Credit Suisse Group AG, Credit Suisse AG and Credit Suisse Securities (USA) LLC ("Credit Suisse" or the "CS Defendants") propose a one-question verdict form that asks the jury to decide only whether Plaintiffs have proven a conspiracy exactly as alleged in the Complaint, i.e., a conspiracy that lasted the full class period and involved all sixteen defendant banks and fifty-two currency pairs. Defendants also propose jury instructions to the effect that, if Plaintiffs fail to prove *any* of the particulars of the alleged conspiracy, the jury should render a verdict for Defendants (Dkt. No. 1811-2, 1812-2).

WHEREAS, Plaintiffs propose a highly detailed verdict form that asks the jury whether they find the existence of any conspiracy and, if so, to identify the relevant time period, the conspirator banks and the currency pairs encompassed by the conspiracy (Dkt. No. 1812-1).

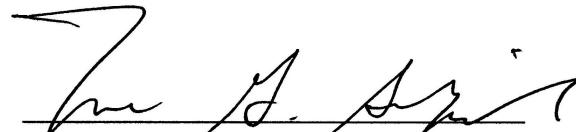
WHEREAS, the two certified issues are: "(1) the existence of a conspiracy to widen spreads in the spot market and (2) the CS Defendants' participation in the conspiracy," *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, 407 F. Supp. 3d 422, 436 (S.D.N.Y. 2019).

WHEREAS, neither proposal is required by the applicable substantive law, and both would likely focus the jury unnecessarily on specific currency pairs. To prevail on the certified issues, Plaintiffs need only prove “a combination or some form of concerted action between at least two legally distinct economic entities” for the purpose of fixing spreads in the FX spot market, in which Credit Suisse joined. *See United States v. Am. Express Co.*, 838 F.3d 179, 193 (2d Cir. 2016) (cleaned up); *In re Vitamin C Antitrust Litig.*, 8 F.4th 136, 147 (2d Cir. 2021) (“Price-fixing agreements . . . are per se unlawful.”).

WHEREAS, the Court is considering a verdict form comprising, in substance, the first six questions in Plaintiffs’ proposed verdict form, as in the attached Court Draft 1. It is hereby

ORDERED that the parties’ request in their joint letter at Dkt. No. 1838 is GRANTED. The parties shall file responses to pretrial memoranda by September 2, 2022. In those responsive memoranda, which shall not exceed 20 pages, the parties shall include any objections to the Court’s proposed verdict form at Court Draft 1, attached.

Dated: August 25, 2022
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE FOREIGN EXCHANGE
BENCHMARK RATES ANTITRUST
LITIGATION

No. 1:13-cv-07789-LGS

SPECIAL VERDICT FORM

We, the jury, unanimously find as follows on the questions submitted to us:

Question 1: Did Plaintiffs prove, by a preponderance of the evidence, the existence of a conspiracy to widen, fix, stabilize, or maintain bid-ask spreads in the FX spot market?

Yes

No

Please continue to Question 2 only if you entered a “YES” response to Question 1. If you entered a “NO” response, your deliberations are complete.

Question 2: Did Plaintiffs prove, by a preponderance of the evidence, that Credit Suisse knowingly participated in the conspiracy you found in response to Question 1?

Yes

No

Please continue to Question 3 only if you entered a “YES” response to Question 2. If you entered a “NO” response, your deliberations are complete.

Question 3: Did Plaintiffs prove, by a preponderance of the evidence, that the conspiracy you found in response to Question 1 existed between December 1, 2007 and December 31, 2013 (inclusive)?

Yes

No

Please continue to Question 4 only if you entered a “No” response to Question 3. If you entered a “Yes” response, please continue to Question 5.

Question 4: If you did not find the conspiracy existed between December 1, 2007 and December 12, 2013, please state the time period during which the conspiracy you found in response to Question 1 existed?

Please continue to Question 5.

Question 5: Did Plaintiffs prove, by a preponderance of the evidence, that Credit Suisse knowingly participated in the conspiracy you found, in response to Question 1 and Question 2, with 15 other banks specified in Attachment A?

Yes

No

Please continue to Question 7 only if you entered a “YES” response to Question 5. If you entered a “NO” response, please continue to Question 6.

Question 6: For each of the following banks, did Plaintiffs prove, by a preponderance of the evidence, that the bank identified below knowingly participated in the conspiracy you found in response to Question 1 and Question 2 with Credit Suisse?

Bank of America	<hr/>	<hr/>
	Yes	No
Bank of Tokyo-Mitsubishi	<hr/>	<hr/>
	Yes	No
Barclays	<hr/>	<hr/>
	Yes	No
BNP Paribas	<hr/>	<hr/>
	Yes	No
Citigroup	<hr/>	<hr/>
	Yes	No
Deutsche Bank	<hr/>	<hr/>
	Yes	No
Goldman Sachs	<hr/>	<hr/>
	Yes	No
HSBC	<hr/>	<hr/>
	Yes	No
JPMorgan	<hr/>	<hr/>
	Yes	No
Morgan Stanley	<hr/>	<hr/>
	Yes	No
RBC	<hr/>	<hr/>
	Yes	No
RBS	<hr/>	<hr/>
	Yes	No
Société Générale	<hr/>	<hr/>
	Yes	No
Standard Chartered	<hr/>	<hr/>
	Yes	No
UBS	<hr/>	<hr/>
	Yes	No

ATTACHMENT A

List of Banks

1. “Bank of America” includes Bank of America Corporation, Bank of America, N.A., and Merrill Lynch, Pierce, Fenner & Smith Incorporated.
2. “Bank of Tokyo-Mitsubishi” includes: the Bank of Tokyo-Mitsubishi UFJ, Ltd.
3. “Barclays” includes Barclays Bank PLC and Barclays Capital Inc.
4. “BNP Paribas” includes BNP Paribas Group, BNP Paribas North America Inc., BNP Paribas Securities Corp., and BNP Prime Brokerage, Inc.
5. “Citigroup” includes Citigroup Inc., Citibank, N.A., Citicorp, and Citigroup Global Markets Inc.
6. “Deutsche Bank” includes Deutsche Bank AG.
7. “Goldman Sachs” includes the Goldman Sachs Group, Inc. and Goldman, Sachs & Co.
8. “HSBC” includes HSBC Holdings PLC, HSBC Bank PLC, HSBC North America Holdings Inc., HSBC Bank USA, N.A., and HSBC Securities (USA) Inc.
9. “JPMorgan” includes JPMorgan Chase & Co. and JPMorgan Chase Bank, N.A.
10. “Morgan Stanley” includes Morgan Stanley, Morgan Stanley & Co. LLC, and Morgan Stanley & Co. International PLC.
11. “RBC” includes RBC Capital Markets LLC.
12. “RBS” includes The Royal Bank of Scotland Group PLC, The Royal Bank of Scotland PLC, and RBS Securities Inc.
13. “Société Générale” includes Société Générale S.A.
14. “Standard Chartered” includes Standard Chartered Bank.
15. “UBS” includes UBS AG, UBS Group AG, and UBS Securities LLC.